IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 3325/2001

MAHESH KUMAR SHARMA
Vs.
THE DISTRICT & SESSIONS JUDGE, JAIPUR CITY & ORS.

Date: 27.11.2006.

HON'BLE MR. K.S. RATHORE, J.

Mr. Manish Bhandari for the petitioner.
Mr. V.S. Gurjar for respondent Raj. High Court.
Mr. B.S. Chhaba, Addl. GA for the State.

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The petitioner was appointed on the post of class-IV on account of non-joining of one Shri Deendayal as the petitioner's name was at No.1 in the reserve list. The services of the petitioner have been terminated vide impugned order dated 30.03.99, against which the petitioner preferred appeal and the same was rejected vide order dated 01.05.2000.

The case of the petitioner is that the services of the petitioner have been terminated by respondent No.3 to whom the petitioner has impleaded as party in person Shri Om Prakash Gupta-II, the then Special Judge, Fake Currency Note Cases, Jaipur City, Jaipur, which is biased with the petitioner as the petitioner has refused to work at his residence.

Therefore, the impugned termination order dated 30.03.99 has been passed. It is further submitted by the petitioner that his services have been terminated without conducting any enquiry into the matter as it was alleged that the work of the petitioner was not found satisfactory. It is also submitted that without giving opportunity of being heard to the petitioner and without holding any enquiry, the respondents cannot pass the impugned termination order dated 30.03.99.

In support of his submissions, the learned counsel for the petitioner has placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of ***V.P. Ahuja Vs. State of Punjab And Others, decided on March 6, 2000 and reported in (2000)3 SCC 239,*** wherein the Hon'ble Supreme Court has held that a probationer like a temporary servant is also entitled to certain protection- His services cannot be terminated arbitrarily or punitively without complying with the principles of natural justice- Appellant's service terminated during probation period invoking terms and conditions of his appointment which permitted termination without notice- Termination order stating that the appellant “failed in the performance of his duties administratively and technically”- Besides, the affidavits filed in High Court and in the Supreme

Court also indicated the background in which the appellant was terminated- the order on the face of it was stigmatic and punitive and the High Court was wrong in holding it as non-stigmatic- Termination order could not be passed without holding a regular inquiry and without following the principle of natural justice.

Learned counsel for the respondents referred the appointment order dated 29.03.97 (Annexure-1), by which the petitioner was given appointment on the post of class-IV, although there was condition in the order of appointment that if the work of the petitioner is not found satisfactory, his services can be terminated without notice. The impugned termination order dated 30.03.99 indicates that the petitioner's services are terminated because his work and conduct was not found satisfactory and the Appellate Authority also held that services of the petitioner were not found satisfactory and the order of termination dated 30.03.99 is not stigmatic but it is a simple case of not extending the period of probation. Thus, the termination order does not cast stigma on the petitioner and, therefore, the termination order has not been interfered with by the Appellate Authority.

Learned counsel for the respondents further submits that temporary appointment was given and during

the probation period the services of the petitioner were not found satisfactory and to this effect the respondents have issued several notices to the petitioner to improve his work. Thus, bare minimum principle of natural justice has been followed to improve his work. The petitioner was initially appointed on the post of class-IV vide appointment order dated 29.03.97 on temporary basis for a period of two months and the term was extended from time to time and during this period, notices were issued to the petitioner to improve his work and ultimately vide impugned order dated 30.03.99, the services of the petitioner have been terminated and nothing wrong has been committed as held by the Appellate Authority.

Learned counsel for the respondents also placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of ***Municipal Committee, Sirsa vS. Munshi Ram, decided on 04.02.2005 and reported in (2005) 2 SCC 382,*** wherein the Hon'ble Supreme Court has held that if order of termination indicates that it is a termination simpliciter and does not cast stigma on the employee nor is it punitive, as in this case, in such cases even the principle of natural justice does not apply and there is no need for formal proceedings of enquiry before making such order- Mere fact that

there was an inquiry into conduct of employee concerned earlier, as in this case, would not thereby render the termination invalid.

He further referred the case rendered by the Hon'ble Supreme Court in ***Bishan Lal Gupta Vs. The State of Haryana And Others, reported in (1978) 1 SCC 202,*** wherein it was held by the Hon'ble Supreme Court that Probationer- Services terminated by an innocuous order after considering his explanation to certain allegations and after a findings against the desirability to continue him in service- Reflection on the person's capabilities not a stigma- Such a government servant is not entitled to a fuller enquiry under the article.

In the instant case, there is reflection on the petitioner regarding capability and not discharging the duties satisfactorily. In view of the ratio decided by the Hon'ble Supreme Court in the aforementioned case of ***Bishan Lal Gupta (supra),*** this remark cannot be considered as stigmatic.

Similarly in another judgment rendered in the case of ***Krishna Dev Araya Education Trust And Another Vs. L.A. Balakrishna, reported in (2001) 9 SCC 319,*** Hon'ble the Supreme Court has held that Termination simipliciter or punitive- Probationer- Service of,

terminated by non-speaking order- Validity of the order challenged by the probationer- The employer in response to the challenge, stating that the services of the probationer were not satisfactory- Such a statement of the employer, held, would not ipso facto mean that the termination was by way of punishment.

Applying the ratio referred by the learned counsel for the respondents and having gone through the order passed by the Appellate Authority, the Appellate Authority has considered all aspects and observed that the work of the petitioner during probation period has not been found satisfactory and categorically held the order does not cast stigma on the appellant.

I have considered the allegations levelled against respondent No.3 that only because the respondent No.3 is biased as the petitioner has refused to discharge his duties at his residence, which has been denied by the respondents. Though reply has not been filed on behalf of respondent No.3, but as per the reply submitted on behalf of the State and the respondent High Court, I am fully satisfied that it is a mere assertion and allegation against respondent No.3 does not survives.

Having gone through the impugned termination order dated 30.03.99 and the order of the Appellate

Authority, I find no illegality as the orders are simpliciter and not stigmatic. Thus, I find no merit in the writ petition.

Consequently, the writ petition fails and the same is hereby dismissed.

(K.S. RATHORE),J.

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